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No. 81

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In The
Supreme Court of the United States

October Term, 1961

THOMAS N. GRIGGS

v.

COUNTY OF ALLEGHENY

*On Writ of Certiorari to the Supreme Court of
Pennsylvania.*

**BRIEF OF COMMONWEALTH OF PENNSYL-
VANIA, BY THE PENNSYLVANIA AERONAU-
TICS COMMISSION, AS AMICUS CURIAE IN
SUPPORT OF PETITION FOR REHEARING BY
COUNTY OF ALLEGHENY**

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TABLE OF CONTENTS

PAGE

Brief of Commonwealth of Pennsylvania, by the Pennsylvania Aeronautics Commission, as amicus curiae in support of Petition for Re-hearing by County of Allegheny:

The Interest of Your Amicus	1
A. Effect Upon Pennsylvania Law	3
B. Effect Upon Air Safety	5
Conclusion	8

TABLE OF CITATIONS

CASES:

Yoffee, Appellant v. Pennsylvania Power & Light Company, 385 Pa. 520, 123 A. 2d 636 (1956)	3
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STATUTES:

Act of May 21, 1931, as amended, Section 17, 72 P.S. Section 2611(q)	5
Act of May 25, 1933, P. L. 1001, as amended, 2 P.S. Section 1461 (The Aeronautical Code)	1
Act of April 17, 1945, P. L. 237, 2 P.S. Section 1550 (Airport Zoning Law)	6
Act 1-A of the Pennsylvania General Assembly, approved March 7, 1962	5

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COMMISSION, AS AMICUS CURIAE IN SUPPORT
OF PETITION FOR REHEARING BY COUNTY OF
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THE INTEREST OF YOUR AMICUS

This brief is submitted by the Commonwealth of Pennsylvania in behalf of the Pennsylvania Aeronautics Commission, a State agency charged with responsibility for aeronautical matters within the Commonwealth, under provisions of The Aeronautical Code, the Act of May 25, 1933, P. L. 1001, as amended, 2 P.S. Section 1461.

The Interest of Your Amicus

The Commonwealth joins in the petition of the County of Allegheny, defendant in this matter, for a rehearing and reconsideration of the Court's decision. This request is made primarily for two reasons: (a) The unsettling effect which the decision will have upon Pennsylvania real property law, and (b) The adverse effect upon the Commonwealth's aeronautical safety program.

A. EFFECT UPON PENNSYLVANIA LAW

The Supreme Court of Pennsylvania in *Yoffee, Appellant v. Pennsylvania Power & Light Company*, 385 Pa. 520, 123 A. 2d 636 (1956), ruled that where there is a conflict between the Pennsylvania Civil Aeronautics regulations and the Civil Air regulations, promulgated by the Federal Civil Aeronautics Board, the latter prevail. The question arose in a situation where an aircraft was flying at an altitude permitted by Federal regulations but prohibited by State regulations. The Court of Common Pleas of Dauphin County ruled that the Pennsylvania regulations prevailed. The Pennsylvania Supreme Court reversed this decision, stating at pages 525, 526 that:

“ * * * If there were conflicts between the Pennsylvania regulations and the Federal regulations the latter would predominate.”

Although the Pennsylvania Court did not discuss this aspect of the case at length, the effect of the decision was to invalidate completely any conflicting regulations of the Pennsylvania Aeronautics Commission dealing with control of the air space, at the same time establishing that such right of control rested with the Federal authorities. This pre-emption question does not appear to have been touched upon in the Pennsylvania Supreme Court's consideration of the *Griggs* case. There, the only consideration was whether the County of Allegheny was liable, and the Court did not pass upon the question of possible Federal pre-emption.

Effect Upon Pennsylvania Law

Since it is a social necessity that responsibility be clearly fixed in the field of air navigation, so that State authorities may intervene for the public protection wherever the Federal arm has not pre-empted the field, it is most important to the Commonwealth that this question of pre-emption be clarified.

B. EFFECT UPON AIR SAFETY

The Commonwealth of Pennsylvania is one of several states which provide tax funds by way of subsidies to local public agencies for the development of aeronautical facilities. The primary purpose is the public safety. The money is spent in large measure for navigational and other facilities designed to prevent accidents. The Allegheny County airport, owned and operated by the defendant herein, is one of the agencies receiving these subsidies. Many other public airports throughout the State likewise receive the benefit of these State funds. In fact, every airport in Pennsylvania which is used by commercial airlines is a beneficiary. Over the years, many millions of dollars have been spent by the State to assist its local communities in providing safe aeronautical facilities.

The present appropriation is \$1,000,000.00, as authorized under provisions of Act 1-A of the Pennsylvania General Assembly, approved March 7, 1962. This appropriation represents 25 per cent of the cost of the local improvements. The local authority contributes an additional 25 per cent and the remaining 50 per cent is furnished by the Federal government. In addition to this, the State Legislature has appropriated to the Pennsylvania Aeronautics Commission the proceeds from the tax collected upon aeronautical fuels sold in Pennsylvania, as provided by Section 17 of the Act of May 21, 1931, as amended, 72 P.S. Section 2611(q). These funds also are used primarily

to assist local communities in airport improvement and air safety. The Commonwealth in addition is an airport owner and operator in its own right of two airline airports, the Harrisburg-York State Airport and the Black Moshannon State Airport, and the owner of an airport at Wellsboro, Pennsylvania. The Commonwealth, therefore, has a direct as well as an indirect interest in the problems created by the Court's decision.

Basically, governmental airport subsidies have been found necessary in order to maintain the facilities required by the nation's aeronautical system. Local communities have been unable to carry this burden by themselves. In most cases, the local communities are already so financially overextended in this field that it is frequently difficult for them even to provide their 25 per cent. sponsor's share of the Federal-State program. It is clear that if they are now to be burdened by additional costs of navigation easements, their ability to maintain proper safety standards will be severely limited. It can be anticipated that local authorities will necessarily call upon State and Federal governments to meet the deficiency. It, therefore, appears that as a practical matter the Federal government will be obliged in any event to carry the lion's share of the burden imposed by the Court's decision.

Apart from such appropriation of air space as may have been intended by the Congress, there is, in effect, a supplemental "pre-emption" by the Pennsylvania General Assembly under the Airport Zoning Law, the Act of April 17, 1945, P. L. 237, 2 P.S. Section 1550. In this respect the State acts in these areas

not subject to Federal regulation, so that there may be no gap in these areas of control. This manifests the legislative intention to exercise governmental dominion over air space entirely apart from any proprietary rights enjoyed by local airports. This is consistent with the legislative purpose to maintain the air space as a free public highway for all citizens.

It is suggested that the reversal of this approach, which is inherent in the Court's decision, creates not only complex and unsettling legal questions but also overwhelming financial problems for local airports. This combination of circumstances could seriously affect aviation safety.

*Conclusion***CONCLUSION**

For these reasons, it is respectfully urged that a rehearing of this matter would be most beneficial, since it would clarify many questions which now remain open as a result of the Court's decision.

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